



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,537	12/13/2001	Gerhard J Bleys	P 282804/EUR	8094
37058	7590	03/17/2005	EXAMINER	
TIM HEADLEY			SERGENT, RABON A	
GARDERE WYNNE SEWELL LLP			ART UNIT	
1000 LOUISIANA, SUITE 3400			PAPER NUMBER	
HOUSTON, TX 77002			1711	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

LD

## Office Action Summary

Application No.

09/914,537

Applicant(s)

BLEYS ET AL.

Examiner

Rabon Sergeant

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-12 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-12 and 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1711

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 30, 2004 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-4, 6-12, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bleys ('226) or Bleys et al. ('779) or Eling et al. ('483), each in view of Mackey ('409 or '553 or '528).

Bleys and Bleys et al. and Eling et al. disclose the production of resilient flexible polyurethane foams prepared from the reaction of water, 4,4'-diphenylmethane diisocyanate, and

Art Unit: 1711

polyether polyols, having greater than 50% by weight oxyethylene groups, functionalities of 2-6, and equivalent weights that overlap those claimed by applicants. See abstracts. Furthermore, patentees disclose that prepolymer processes may be employed and that the polyurethanes may be molded. See column 3, lines 53+ within Bleys. See abstract and column 5, line 13 within Bleys et al. See abstract and column 4, lines 61+ within Eling et al.

4. Though the primary references are silent regarding applicants' claimed process of coating the mold with an external release agent and producing at least 10 moldings prior to recoating the mold with the external release agent, the position is taken that the initial coating of a mold with an external release agent and the subsequent production of up to 40 polyurethane moldings prior to recoating the mold with an external release agent was known at the time of invention. Mackey discloses such molding operations at column 9, lines 52+. Mackey further discloses that the mold may be closed or open. See column 9, lines 28-42. It is noted that applicants disclose at page 8, line 6 of the specification that internal mold release agents are suitable components for the compositions and that applicants' claims fail to exclude the use of internal mold release agents. Therefore, it would have been obvious to utilize the molding process of Mackey to produce the polyurethane moldings of the primary references, because one would have been motivated to utilize an efficient and rapid molding process in the production of the polyurethanes, so as to increase throughput and decrease operating expenses. Additionally, it would have been well within the purview of the skilled artisan to treat the mold with release agent at time intervals that provided the greatest efficiency.

5. Applicants' 37 CFR 1.132 declaration of December 30, 2004 has been considered; however, the position is taken that applicants' single example fails to conclusively establish that

Art Unit: 1711

the molding process of Mackey cannot be utilized with the compositions of the primary references. Each of the primary references teaches that internal mold release agents are viable components for their compositions. See column 3, lines 33 and 34 within Bleys. See column 4, line 22 within Bleys et al. See column 4, line 36 within Eling et al. This information in combination with the teachings within Mackey concerning the production of foams clearly establishes that internal mold release agents would have been expected to function without detriment within the compositions of the primary references. Therefore, in order to establish that such would not have been the case, a broader range of showings than that provided by applicants, commensurate with the teachings of Mackey, is required. Applicants' single example represents only a single internal mold release formulation of the several disclosed and represents only a single concentration within a much broader range of suitable concentrations. Since it is to be expected that skilled artisans would make changes and adaptations commensurate with the teachings of the prior art, if they did not immediately obtain the desired results, the position is taken that failure based upon a limited or narrow teaching by experimenters who have no interest in succeeding should not be accorded great weight.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (571) 272-1079.

R. Sergent  
March 8, 2005

  
RABON SERGENT  
PRIMARY EXAMINER